

REMARKS

I. Status of Claims

Claims 16 and 17 are hereby cancelled without prejudice. Claims 1, 6, 7 and 18 have been amended. Claim 1 has been amended to introduce the subject matter of dependent claims 16 and 17. Claims 6 and 8 have been amended to correct antecedent basis and claims 7 and 18 have been amended to change their dependencies. Claims 1 to 15 and 18 to 22 are now pending.

It is respectfully submitted that no new matter was added in this amendment.

II. Claim Rejection 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 6 and 8 under 35 U.S.C. § 112, second paragraph, as being indefinite.

With regard to claim 6, the Examiner requested clear and proper antecedent basis for the “curved wall”. In response, the claim has been amended to clarify that “the plenum chamber ... has a curved wall, the inlet intersecting the curved wall”.

With regard to claim 8, the Examiner requested clear and proper antecedent basis for said “plenum chamber”. In response, Applicant points out that claim 8 depends from claim 7. Claim 7 has now been amended to depend from claim 5 which recites “a plenum chamber”.

II. Claim Rejection 35 U.S.C. § 102(b)

In the Office Action, the Examiner rejected claims 1, 2, 4-10, 15, 16 and 19-22 under 35 U.S.C. § 102(b) as anticipated by Ingle et al. (U.S. 6,679,256).

However, in his Conclusion, the Examiner noted that claims 11-14, 17 and 18 were only objected to as being dependent upon a rejected base claim. The Examiner stated that these claims “would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have therefore amended claim 1 (without prejudice) to incorporate the limitations of claims 16 and 17.

Applicants note claim 16 depends on claim 15, which in turn depends on claim 14. The limitations of claim 15 and claim 14 were not introduced into claim 1 as applicants believe the claimed invention is patentable over the Ingle et al. reference without addition of the elements of these claims.

In this regard, Applicants point out that adequate support is found in the Specification as filed for claim 1, as amended. The Specification shows an embodiment which does not include an inlet and a plenum chamber which is configured such that a swirling airflow is generated in the plenum chamber above the lid of a pierced medicament pack. Such an arrangement is shown in Figures 7a and 7b. Page 17, lines 13 to page 18, line 2 of the Specification as filed also refers to an embodiment in which the piercing member of Figures 6a to 6c is used in the embodiment of Figure 2 in which the inlet and plenum chamber are not configured to generate a swirling airflow. In particular, page 18, line 10 refers to Figure 7A and 7b as being a "modified and preferred version of the aforementioned embodiment".

Claim 1 as amended recites: A dry powder inhaler for delivering a dose of medicament for inhalation by a user, the dose being contained in a medicament pack having an interior and a puncturable lid, the inhaler comprising a drug entrainment device including a drug outlet tube terminating with a primary piercing element to pierce an opening in said lid when the medicament pack is located in the inhaler, a secondary piercing member to pierce a plurality of peripheral openings in said lid and, an airflow path to enable the supply of a charge of gas into the medicament pack via said peripheral openings to scour the interior of the pierced medicament pack such that substantially all of the dose is entrained in the gas and flows out of the medicament pack via the drug outlet tube, wherein the secondary piercing member comprises a plurality of blades with a vane depending from each blade that extend towards and pierces the lid of a pack to direct a swirling flow of air therein, the vanes having arcuately shaped outer edges.

According to the Examiner, the Ingle reference discloses a dry powder inhaler comprising a medicament pack with a lid, a drug outlet tube with a primary piercing element , a secondary piercing members (i.e. see teeth or vanes) and a supply of a charge gas. As

acknowledged by the Examiner, the Ingle et al reference does not disclose or suggest, inter alia, a “secondary piercing member comprising a plurality of blades with a vane depending from each blade that extend towards and pierces the lid of a pack to direct a swirling flow of air therein, the vanes having arcuately shaped outer edges.” As such, it cannot anticipate claim 1. As claims 2 to 15 and 18 to 22 depend from claim 1, these claims also are not anticipated by the Ingle et al. reference.

Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 1102(b).

II. Claim Rejection 35 U.S.C. § 103

In the Office Action, the Examiner rejected claim 3 under 35 U.S.C. § 1039(a) as being unpatentable over Ingle et al. in view of Braithwaite (U.S. 2005/0121023).

Applicants again refer the Examiner to his Conclusion, wherein he noted that claims 11-14, 17 and 18 were only objected to as being dependent upon a rejected base claim and that they “would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have amended claim 1 (without prejudice) to incorporate the limitations of claims 16 and 17.

The Ingle reference is discussed above.

The Braithwaite reference is purportedly directed to “a medicament delivery assembly which comprises mouthpiece provided with an air amplifier and a primer source, wherein the mouthpiece and the air amplifier are each is connected to the primer source via an actuatable valve; the air amplifier is also provided with a medicament extraction tube such that when the actuatable valve is opened then the primer source is activated and causes air to flow to the air amplifier.” As acknowledged by the Examiner, the Braithwaite reference also does not disclose or suggest a “secondary piercing member comprising a plurality of blades with a vane depending from each blade that extend towards and pierces the lid of a pack to direct a swirling flow of air therein, the vanes having arcuately shaped outer edges”, and as such, cannot cure the deficiency

of the Ingle reference.

For the foregoing reasons, Applicants submit that the combination of over Ingle et al. in view of Braithwaite does not render claim 3 of the present invention obvious. In view of the foregoing, Applicant respectfully requests withdrawal of the rejection to claim 3 under U.S.C. § 103(a).

Conclusion

This Response is being submitted in response to the Office Action dated November 30, 2009 in the above-identified application. This response is being submitted together with a petition for two-month extension of time and the fee due under 37 C.F.R. § 1.17(a)(3). If it is determined that any additional fee is due in connection with this filing, the Commissioner is authorized to charge said fees to Attorney Deposit Account No. 50-0552.

An early and favorable action on the merits is earnestly requested.

Respectfully submitted,
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